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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/540,442

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Thomas Kiepe

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JONES & SMITH, LLP

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EXAMINER

STEPHENS III, JOSE S

ART UNIT

PAPER NUMBER

4193

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/540,442	<b>Applicant(s)</b> KIEPE, THOMAS	
	<b>Examiner</b> JOSE S. STEPHENS III	<b>Art Unit</b> 4193	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 1-3, 5, 6 and 9 are objected to because of the following informalities:

In claim 1, line 5, "b" should be changed to --be--.

In claim 1, line 9, "and/or" should either be changed to --and --or-- or --or-- for clarity.

In claim 2, line 1, "gap" should be changed to --cap--.

In claim 2, line 4, "and/or" should either be changed to --and -- or --or-- for clarity.

In claim 3, line 4, "and/or" should either be changed to --and -- or --or-- for clarity.

In claim 5, line 4, "and/or" should either be changed to --and -- or --or-- for clarity.

In claim 6, line 3, "convexely" should be changed to --convexly--.

In claim 6, line 3, there is insufficient antecedent basis for the limitation "said presentation area"; therefore claim 6 should be dependent upon claim 5.

In claim 9, line 3, there is insufficient antecedent basis for the limitation "said acrylic lens"; therefore claim 9 should be dependent upon claim 6.

Appropriate corrections are required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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3. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention

Regarding claim 4, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 3, 7, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Neuschaefer (US Patent 2,595,403).

With respect to claim 1, figures 1 and 2, Neuschaefer teaches a rod-type expulsion capsule (the capsule in figure 2) for solid or pasty materials and for liquid containers, the capsule comprising a tubular capsule element 1 for receiving the material or the liquid container, a rotating part 5 and a slide 7 supported for rotation within the rotating part, which slide is movable in the longitudinal direction of the capsule element by means of the rotating part and is connected to the material or the liquid container, and a closing cap 3, by means of which an opening of the capsule element may be closed, characterized in that the rotating part includes a front-side recess (see the space between the continuous rim and the application element) with a continuous rim (the top circle of the tubular

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capsule element 1), in which recess an application element 2 is arranged and is firmly connected and especially pasted together with and/or locked to the rotating part.

With respect to claim 2, figures 1 and 2, Neuschaefer teaches that supplementary an application element 4 is arranged on the front side of the closing cap and is firmly connected and especially pasted together with and/or locked to the closing cap.

With respect to claim 3, figures 1 and 2, Neuschaefer teaches that the application element 4 includes a first part of a slip-on orientation and the closing cap 3 and/or the rotating part 5 includes a second part of the slip-on orientation.

With respect to claims 7 and 10, figures 1 and 2, Neuschaefer teaches application element 4 is formed as a figure.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Neuschaefer (US Patent 2,595,403) in view of O'Connor (US 2001/0047951).

With respect to claim 4, Neuschaefer teaches all the limitations of claim 1. Neuschaefer does not teach the application element includes an eyelet for fixing a band, a chain, or the like. However, in figure 1, O'Connor teaches an eyelet 16 for fixing a band 18. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the application element of Neuschaefer by

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incorporating the eyelet and the band, as taught by O'Connor, for the purpose of being able to carry the rod-type expulsion capsule around a neck or a wrist.

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Neuschaefer (US Patent 2,595,403) in view of Jones et al. (US Patent 6,202,852).

With respect to claim 5, Neuschaefer teaches all the limitations of claim 1. Neuschaefer does not teach the application element includes a presentation area which serves for receiving characters, numbers and/or pictorial representations. However, in figures 3-5, Jones et al. teaches an application element 10 that includes a presentation area 15 which serves for receiving pictorial representations 12. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the application element of Neuschaefer by incorporating the presentation area, as taught by Jones et al., for the purpose of providing advertising or other information.

9. Claims 6, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neuschaefer (US Patent 2,595,403) in view of Chiba et al. (US Patent 5,253,111).

With respect to claim 6 and 9, Neuschaefer teaches all the limitations of claim 1. Neuschaefer does not teach the presentation area includes a convexly formed acrylic lens and the lens has a curvature radius which is the same in each surface point. However, in figure 1 of Chiba et al. teaches a convexly formed acrylic lens 12 and the lens has a curvature radius which is the same in each surface point 12b. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the presentation area of Neuschaefer by adding an acrylic lens that has a curvature radius which is the same in each surface point to the outer surface, as taught by

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Chiba et al., for the purpose of making the presentation area more durable and to further protect it.

With respect to claim 8, the combination of Neuschaefer and Chiba et al. teach all the limitations of claim 6. The combination also teaches the acrylic lens (Chiba et al., reference number 12) terminates flush with the outer surface area of the closing cap (Neuschaefer, reference number 3).

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Mitchell (US Patent 2,368,997) teaches a lipstick holder.

Gueret (US Patent 6,116,802) teaches a device for packaging and applying a crumbleable product.

Moore (US Patent 4,579,134) teaches a lipstick container.

Kandoory (US Patent 4,422,545) teaches a cosmetic displayer and dispenser.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSE S. STEPHENS III whose telephone number is (571)270-3797. The examiner can normally be reached on M-F, alternate F off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Nguyen can be reached on 571-272-1753. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JSS

/Long Nguyen/  
Supervisory Patent Examiner  
Art Unit 4193